

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

vs.

Criminal No. 19-134

TERRY K. SUGGS, JR.

and

JERMAINE K. CLARK

Transcript of Arraignment and Detention Hearing held on
Friday, May 24, 2019, in the United States District Court,
700 Grant Street, Pittsburgh, PA 15219, before Honorable
Cynthia Reed Eddy, Chief Magistrate Judge.

APPEARANCES:

For the Government: U.S. Attorney's Office
by Rebecca Silinski, Esq.

For the Defendant
Suggs: Robert M. Gamburg, Esq.

For the Defendant
Clark: Kenneth Haber, Esq., and
Anne Marie Mancuso, Esq.

Court Reporter: Noreen A. Re, RMR, CRR
700 Grant Street
Suite 5300
Pittsburgh, PA 15219

Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription.

1 PROCEEDINGS

2 -----

3 IN OPEN COURT - DEFENDANTS PRESENT WITH COUNSEL

4 -----

5 THE COURT: This is the time scheduled for the joint
6 arraignment in the matters of United States of America versus
7 Terry Kenneth Suggs, Jr., at 19-134 and United States of
8 America versus Jermaine Kyle Clark at Criminal No. 19-134.

9 Would counsel for the government please enter her
10 appearance.

11 MS. SILINSKI: Good afternoon, Your Honor. Assistant
12 United States Attorney Rebecca Silinski appearing on behalf of
13 the government. And seated with me at counsel table is FBI
14 Special Agent Darcos Cruz, C-R-U-Z.

15 THE COURT: Thank you. And counsel for Mr. Clark?

16 MR. HABER: Your Honor, Kenneth Haber here for
17 Mr. Clark.

18 MS. MANCUSO: May it please the Court, Anne Marie
19 Mancuso here today, also on behalf of Mr. Clark.

20 THE COURT: Thank you. And on behalf of Mr. Suggs?

21 MR. GAMBURG: Good afternoon, Your Honor. Robert
22 Gamburg on behalf of Mr. Suggs.

23 THE COURT: Robert?

24 MR. GAMBURG: Gamburg, G-A-M-B-U-R-G, Your Honor.

25 THE COURT: Thank you. Please be seated. And I

1 understand that no one has an objection to handling this as a
2 joint arraignment; is that correct?

3 MR. GAMBURG: That's correct.

4 MR. HABER: Correct.

5 THE COURT: Very well, then. Have the Defendants
6 received a copy of the indictment? Mr. Haber?

7 MR. HABER: Yes, Your Honor.

8 THE COURT: Mr. Gamburg?

9 MR. GAMBURG: Yes, Your Honor.

10 THE COURT: Have both counsel had an opportunity to
11 review the indictment with their clients?

12 MR. HABER: Yes, Your Honor.

13 MR. GAMBURG: Yes, Your Honor.

14 THE COURT: Would either Defendant like to have the
15 indictment read to them today?

16 MR. HABER: Your Honor, we would waive reading.

17 MR. GAMBURG: We would also waive reading of the
18 indictment, Your Honor.

19 THE COURT: I'm going to ask counsel to briefly
20 summarize the indictment and the maximum penalties, please.

21 MS. SILINSKI: Yes, Your Honor. As to the three-
22 count indictment charged in this matter, both Defendants are
23 charged in conspiracy to distribute and possess with intent to
24 distribute 5 kilograms or more of a mixture and substance
25 containing cocaine and 500 grams or more of a mixture or

1 substance containing a detectable amount of methamphetamine.

2 Both Defendants are charged respectively at Count 2
3 to Mr. Clark and at Count 3 to Mr. Suggs with a substantive
4 offense of possession with intent to distribute.

5 As to all three of the counts, Your Honor, each count
6 carries with it a maximum penalty of a term of imprisonment of
7 not less than 10 years to a maximum of life, a fine not to
8 exceed \$10 million and a term of supervised release of at
9 least 5 years. Additionally, if the Defendant has a prior
10 conviction for a second serious drug felony or serious violent
11 felony, that a final term of imprisonment of not less than
12 15 years to maximum of life and a fine not to exceed
13 \$20 million and a term of supervised release of at least
14 10 years. Additionally, a mandatory assessment as to each
15 count. Restitution is not applicable, and forfeiture is
16 applicable as set forth in the indictment.

17 THE COURT: Thank you. Mr. Suggs, do you understand
18 the charges against you, sir?

19 DEFENDANT SUGGS: Yes, ma'am.

20 THE COURT: And do you understand the maximum
21 penalties?

22 DEFENDANT SUGGS: Yes, ma'am.

23 THE COURT: Mr. Gamburg, how does your client plead?

24 MR. GAMBURG: Not guilty, Your Honor.

25 THE COURT: Does he wish to retain his right to a

1 trial by jury?

2 MR. GAMBURG: Yes, Your Honor.

3 THE COURT: I have here a receipt for the Rule 16
4 material, Miss Silinski. Does this complete discovery?

5 MS. SILINSKI: Your Honor, at this time it's noted in
6 the Rule 16 as to both Defendants that due to the volume of
7 the jail calls that have been obtained by the government, we
8 are still trying to put them onto discs to provide to counsel.
9 Additionally, due to the sensitive nature and concerns with
10 regards to witness safety, there will be a rolling production,
11 consistent with the government's obligations.

12 THE COURT: And how many days do you foresee for
13 trial?

14 MS. SILINSKI: I would anticipate four days, Your
15 Honor.

16 THE COURT: Additional time for Mr. Suggs?

17 MR. GAMBURG: No, Your Honor.

18 THE COURT: And has Mr. Suggs been processed by the
19 marshals?

20 THE MARSHAL: Yes, Your Honor.

21 THE COURT: I have a motion for extension of time to
22 file pretrial motions by both Defendants. I'll grant those
23 motions. Pretrial motions are due on July 8th. If you need
24 an extension of time, you'll need to file a motion with Judge
25 Conti.

1 Now, as to Mr. Clark, do you understand the charges
2 against you, sir?

3 DEFENDANT CLARK: Yes, Your Honor.

4 THE COURT: And do you understand the maximum
5 penalties?

6 DEFENDANT CLARK: Yes, Your Honor.

7 THE COURT: Mr. Haber, how does your client plead?

8 MR. HABER: Not guilty, Your Honor.

9 THE COURT: And does he wish to retain his right to
10 trial by jury?

11 MR. HABER: Yes, Your Honor.

12 THE COURT: Mr. Haber, is the discovery situation the
13 same for your client?

14 MR. HABER: I believe it is.

15 MS. SILINSKI: With the caveat, Your Honor, that, in
16 addition, Mr. Clark will be receiving what's known as ping
17 data that has been obtained by law enforcement. However, at
18 the same time that's still being placed onto a medium to
19 transport to them.

20 THE COURT: And also an estimate of four days for
21 trial?

22 MS. SILINSKI: Correct, Your Honor.

23 THE COURT: Additional time, Mr. Haber?

24 MR. HABER: One day, Your Honor.

25 THE COURT: Has Mr. Clark been processed by the

1 marshals?

2 THE MARSHAL: Yes, Your Honor.

3 THE COURT: Anything further as to the arraignment of
4 either Defendant on behalf of the government?

5 MS. SILINSKI: No, Your Honor.

6 THE COURT: Anything on behalf of either of the
7 Defendants pertaining to arraignment?

8 MR. GAMBURG: No, Your Honor.

9 MR. HABER: No, Your Honor.

10 THE COURT: So the government is seeking detention in
11 these cases, and I understand that the parties are agreeable
12 to a joint detention hearing; is that correct?

13 MS. SILINSKI: On behalf of the government, yes, Your
14 Honor.

15 MR. HABER: Correct on behalf of Mr. Clark, Your
16 Honor.

17 MR. GAMBURG: Yes, Your Honor, on behalf of
18 Mr. Suggs.

19 THE COURT: Ms. Silinski, are these presumption
20 cases?

21 MS. SILINSKI: Yes, Your Honor, they are presumption
22 cases pursuant to the Bail Reform Act in that both Defendants
23 have been charged with a violation of the Controlled Substance
24 Act, which carries a maximum penalty of ten years or more.

25 THE COURT: Do you wish to present any evidence at

1 this time? Or are you waiting for rebuttal?

2 MS. SILINSKI: Your Honor, at this time I would only
3 proffer that the indictment has a finding of probable cause
4 that both Defendants have committed the offenses. We would
5 additionally proffer and point out for the Court the risk
6 assessment -- an assessment of danger is founded in the
7 reports as to each of the Defendants. Specifically noting for
8 the Court, here we have a situation where there is a
9 confidential informant.

10 And as to at least Mr. Suggs, Mr. Suggs has a prior
11 felony conviction of retaliating against a witness victim.
12 Both Defendants have prior felony offenses and drug
13 convictions as well. As to any additional evidence, since
14 this is a detention hearing, I'll wait until after the
15 Defendants have put on the record any information pertaining
16 to rebutting that.

17 THE COURT: Okay. Mr. Haber, any evidence that you
18 would like to present to rebut the presumption, sir?

19 MR. HABER: Your Honor, I would like to do so mostly
20 by proffer, if there is no objection.

21 MS. SILINSKI: No, Your Honor.

22 THE COURT: You may proceed.

23 MR. HABER: Thank you, Your Honor.

24 THE COURT: And give me just a moment so I'm looking
25 at the right report.

1 (Pause.)

2 MR. HABER: Your Honor, Mr. Gamburg and I have
3 spoken. And with the Court's permission, if there is no
4 objection by the prosecution, he was going to proceed first.

5 THE COURT: Sure. That's fine. I see you standing
6 back there, so that's fine. Go ahead.

7 MR. GAMBURG: We had briefly discussed it before
8 court.

9 THE COURT: That's fine. Go ahead. So do you want
10 to call a witness? Or are you wanting to proceed also by
11 proffer?

12 MR. GAMBURG: With the permission of the government,
13 I would ask to proceed by proffer, Your Honor.

14 MS. SILINSKI: Yes, Your Honor.

15 THE COURT: Go ahead.

16 MR. GAMBURG: Thank you, Judge. If I may, Your
17 Honor, I'm 99 percent sure that the Court has read my written
18 submission, so I'm not going to belabor some of the issues.

19 Your Honor, in this particular case we had the
20 fortune of having a preliminary hearing prior to the case
21 being adopted by the federal authorities. And at that
22 preliminary hearing, Your Honor -- and this goes to the weight
23 of the evidence against Mr. Suggs specifically, Your Honor.

24 At that preliminary hearing it was indicated that
25 there was no information about Mr. Suggs. There was no

1 telephone contact with Mr. Suggs. There was no confidential
2 informant did not speak of Mr. Suggs.

3 The number that was called was not related to
4 Mr. Suggs. And they testified, quite frankly, that they did
5 not expect another person to arrive. When Mr. Suggs was at
6 the scene, he had nothing in his possession. And, again, to
7 the best of my knowledge, information and belief, what they
8 said was that he had exited the car, entered another car; and
9 that's when he was arrested. What was found in that car that
10 he allegedly got out of was certainly a substantial amount of
11 narcotics; however, that was in a hidden compartment in the
12 car.

13 There's no indication that Mr. Suggs knew that it was
14 there. There's no indication that he had anything to do with
15 it. I'm unaware of any DNA or fingerprints that was tested
16 for for these narcotics that were secreted in a hidden
17 compartment.

18 Judge, I understand this is a presumption case, but
19 it's a rebuttable presumption. As this Court knows, the
20 guidelines indicate it should be the least restrictive means
21 available to the Court pretrial to insure the safety of the
22 community, as well as the risk of flight.

23 He is a lifetime citizen of Pennsylvania. Granted,
24 it's in the Philadelphia section of Pennsylvania. That was
25 verified by Pretrial Services. He has his family in

1 Pennsylvania. He has his life in Pennsylvania.

2 I do note, Your Honor, that he does have a prior
3 history. I do note that one of the charges was for
4 retaliating against a witness. That was part and parcel of
5 his prior federal case from 2005. He did get an additional
6 12 months for that in 2007. I would simply note for the Court
7 that was over 12 years ago.

8 And it also goes back to what I had stated prior,
9 Your Honor, which is that there is absolutely no indication
10 that either Mr. Suggs knows who this CI is or, even more
11 importantly, Your Honor, that the CI even knows who Mr. Suggs
12 is.

13 So I don't think that that is as great of a concern.
14 And I would note that there was no firearms recovered.
15 There's no allegations of firearms. There's no firearms
16 possessed by Mr. Suggs at any time, which was verified. He
17 certainly does have a United States passport, Your Honor. He
18 has certainly traveled overseas. That concern could be easily
19 alleviated by surrendering the passport to Pretrial Services.

20 In addition, Your Honor, when the case was still in
21 the Court of Common Pleas of Allegheny County, his family made
22 arrangements to secure an apartment in Allegheny County so
23 that he could be monitored for electronic monitoring with a
24 bracelet. That apartment is still rented. It's still
25 available for him. And that would alleviate any concerns

1 about the risk of flight.

2 I understand that whenever you're talking about a
3 large quantity of narcotics and these type of allegations,
4 that certainly there is some implied danger to the community.
5 However, with Pretrial Services monitoring the Defendant with
6 an electronic monitor on his ankle, with the surrender of a
7 passport and whatever conditions the Court deems appropriate
8 under these circumstances, certainly, in my opinion,
9 conditions or a combination of conditions would insure both
10 the Defendant appearing as required, as well as a risk of
11 flight.

12 I would also note, Your Honor, that in the criminal
13 history there is no indication that Mr. Suggs has ever not
14 appeared as required for any of these court cases. And I
15 would also respectfully suggest, Your Honor, that with all his
16 family in the Commonwealth of Pennsylvania, with all of his
17 extended family, his work history, all taking place in the
18 Commonwealth of Pennsylvania, that there is certainly a
19 combination of conditions that will insure the requirements of
20 the Bail Reform Act.

21 I would respectfully suggest to this Court that we
22 have overcome the presumption, especially in light of the
23 relative strength and weaknesses of the government's case
24 vis-a-vis Mr. Suggs. Based on that, Your Honor, in accordance
25 with the bail guidelines, we would ask that you release him on

1 conditions.

2 THE COURT: Okay. I think before we go to Mr. Clark,
3 I'll hear the government's response as to Mr. Suggs.

4 MS. SILINSKI: Sure. Your Honor, may I be seated for
5 this?

6 THE COURT: You may.

7 MS. SILINSKI: Thank you, Your Honor. Your Honor,
8 with regards to the weight of the evidence, as the Court is
9 well aware, the federal system operates under two means for
10 which these charges can be brought either by a complaint or by
11 an indictment. Here, Your Honor, we have an indictment that
12 was returned by a Federal Grand Jury of Mr. Suggs' peers. In
13 that, the Federal Grand Jury returned that three-count
14 indictment, two counts against the Defendant.

15 Certainly, the defense counsel will have its
16 opportunity to make any argument as to the sufficiency of the
17 evidence post this detention hearing. With regards to the
18 concern for the safety of the community, it's firmly
19 established with respect to an offense such as this that just
20 the character, life-style or community ties is insufficient to
21 overcome this burden.

22 Even if the Defendant is able to rebut the
23 presumption, the statutory language is clear that Congress
24 intended to equate drug trafficking and drugs with the danger
25 to a community. Congress provided this guidance specifically

1 stating that the committee also emphasizes that the risk that
2 a Defendant will continue to engage in drug trafficking
3 constitutes danger to the safety of any person or the
4 community.

5 Beyond that, Your Honor, the Defendant's criminal
6 history, lack of clear employment and the notion that there
7 are ties to the community isn't sufficient, Your Honor.
8 Moreover, to the extent any opportunity for the Defendant to
9 be released has not been presented to Pretrial. It's not
10 contained in the report. Your Honor, we would argue that the
11 safety of the community is of utmost concern, especially in
12 this case with regards to Mr. Suggs.

13 As to the risk of flight, Your Honor, to the extent
14 the Court would like to hear additional evidence as to
15 Mr. Suggs' travel in and out of the country, I'm happy to put
16 on two exhibits that have been obtained by the United States
17 Customs and Border Patrol.

18 THE COURT: Has the Defendant been --

19 MS. SILINSKI: Yes, Your Honor.

20 THE COURT: -- given copies of the exhibits?

21 MS. SILINSKI: Yes, Your Honor. They are Government
22 Exhibit No. 1 and Government Exhibit No. 2. To the extent the
23 Court would like, I can go ahead and have Agent Cruz take the
24 stand to give a brief synopsis of these.

25 THE COURT: Okay. You may come forward and be sworn.

1 MR. GAMBURG: Again, I know the Court has a copy of
2 the exhibits.

3 THE COURT: I do.

4 MR. GAMBURG: I can stipulate to them. But if the
5 government wishes to call him, either way.

6 THE COURT: I would like to hear from the agent.

7 MS. SILINSKI: Sure. No problem.

8 -----

9 DARCOS CRUZ

10 a witness herein, was duly sworn and testified as follows:

11 -----

12 DIRECT EXAMINATION

13 BY MS. SILINSKI:

14 Q. Go ahead and introduce yourself to the Court.

15 A. Special Agent Darcos Cruz with the FBI.

16 Q. Agent Cruz, how long have you been an agent with the FBI?

17 A. Three years.

18 Q. And what did you do prior to that?

19 A. I was a detective, police officer in Florida.

20 Q. And what part of Florida?

21 A. In the Miami area.

22 Q. Agent Cruz, are you familiar with the US Department of
23 Homeland Security Customs and Border Protection reports that
24 summarize travel history for individuals?

25 A. Yes.

D. Cruz - Direct

16

1 Q. Specifically prior to today's hearing, did you have an
2 opportunity to review as to the Defendant, Mr. Terry Suggs?

3 A. Yes.

4 Q. Would you be able to briefly summarize for the Court the
5 findings as found on Government Exhibit No. 1?

6 A. Yes. As regards to Mr. Suggs, there are several travels
7 starting in 2014. The one that gets my attention from all the
8 years and experience as an investigator in narcotics,
9 especially international, in 2018, within a three-month
10 period, he traveled to three major hubs for cocaine
11 trafficking being Montego Bay, Jamaica; Mexico; and Cartagena,
12 Columbia.

13 Cartagena being a major hub for a source of cocaine,
14 and Montego Bay and Mexico being the routes to bring that into
15 the United States. Within that three-month period, he
16 traveled to all three countries just for a couple days.

17 Q. Agent Cruz, can you specifically identify the dates of
18 that travel?

19 A. Yes. Montego Bay, Jamaica, was February 16th through the
20 19th. Los Cabos, Mexico, was April 14th through the 17th,
21 2018. And Cartagena, Columbia, was May 2nd through May 8th of
22 2018.

23 MS. SILINSKI: I have no additional questions, Your
24 Honor.

25 THE COURT: Cross-examination.

D. Cruz - Cross - by Mr. Gamburg

17

1 MR. GAMBURG: Thank you.

2 -----

3 CROSS-EXAMINATION

4 BY MR. GAMBURG:

5 Q. Good afternoon, Agent Cruz. How are you?

6 A. Good. Thanks.

7 Q. So when you fly to Cartagena out of the United States, you
8 need a passport; correct?

9 A. Yes.

10 Q. And when you fly back from Cartagena to the United States,
11 you need a passport; correct?

12 A. Yes.

13 Q. Same thing with Mexico?

14 A. Yes.

15 Q. Same thing with Montego Bay?

16 A. Yes.

17 Q. If he didn't have a passport, he couldn't leave the United
18 States; correct?

19 A. Legally.

20 Q. And he couldn't re-enter the United States legally either;
21 correct?

22 A. Yes.

23 Q. So if he surrendered his passport, would that be
24 alleviated?

25 A. Legally, yes. But it's done illegally many times.

D. Cruz - Cross - by Mr. Gamburg

18

1 Q. You sort of indicated to the Court that these are major
2 drug distribution hubs; correct?

3 A. Yes.

4 Q. But you were able to find his information, because he left
5 legally and re-entered legally; correct?

6 A. Yes.

7 Q. Are you aware that he went with girlfriends or family or
8 friends?

9 A. No.

10 Q. If he exited the country illegally, there's a strong
11 likelihood that he can never get back in here, based on our
12 border protection; correct?

13 A. Well, I wouldn't say that. There's thousands of people
14 coming in illegally and not being detected.

15 MR. GAMBURG: That's all I have, Your Honor.

16 THE COURT: Any redirect?

17 MS. SILINSKI: Briefly, Your Honor. With regards,
18 Agent Cruz, to the travel in and out, is it your understanding
19 -- can you explain your understanding as to the nature of
20 whether individuals will -- if you know, whether individuals
21 who travel to these countries possibly engaging in illegal
22 behavior could ultimately travel with family or friends or
23 other business associates?

24 THE WITNESS: Yes. Based, again, on training and
25 experience and prior cases involving international nexus, it's

1 typical for United States citizens or it is common in the drug
2 trafficking world to travel to those countries. For example,
3 Columbia, to just talk, set up the deals with the sources of
4 supply and then travel to the other countries to set up the
5 routes, speak with whoever is going to bring it to the United
6 States. Not necessarily him, but just coordinating all the
7 logistics of it.

8 So that's typically what they do. Because,
9 obviously, they know it's difficult for them to do it
10 themselves if they're flying. So everything looks normal as
11 far as the flying looks legal, but it's not that they're
12 bringing anything themselves. It's just to set up all the
13 logistics and the deals for other people to take that risk.

14 MS. SILINSKI: I have no further questions, Your
15 Honor.

16 MR. GAMBURG: Just one based on that, Your Honor.
17 You're not suggesting to the Court that there are not
18 legitimate reasons to go to these places for vacation, are
19 you?

20 THE WITNESS: No.

21 MR. GAMBURG: Thank you.

22 MS. SILINSKI: Nothing further, Your Honor.

23 THE COURT: Thank you. You may step down. So are we
24 moving for Exhibit 1 to be admitted?

25 MS. SILINSKI: Yes, Your Honor. Please.

1 THE COURT: Any other evidence that you want --

2 MS. SILINSKI: No other evidence, Your Honor. Just
3 simply one last argument would be while there certainly are
4 innocent reasons to travel international, Your Honor, in light
5 of the criminal history of the Defendant, the repeated pattern
6 of engaging in drug offenses, it remains the government's
7 position that the presumption has not been rebutted by the
8 Defendant and detention is appropriate in this case.

9 THE COURT: Okay. And I sense you have something
10 else you would like to say, sir?

11 MR. GAMBURG: Nothing further, Your Honor.

12 THE COURT: Okay. I'm going to go ahead and make my
13 ruling as to Mr. Suggs. The government has indicated that
14 this is a presumption case, and I find that it is a
15 presumption case.

16 First, the Defendant has been charged with violations
17 of Title 21, USC Section 841, and 21 USC 841(a)(1) and 21 USC
18 841(b)(1)(a)(2), 21 USC 841(b)(1)(a)(8) and all in one
19 Count 3. Pursuant to the Bail Reform Act, I find there is a
20 rebuttable presumption. No conditions or combination of
21 conditions will reasonably assure the safety of the community.

22 I've considered the request of the United States
23 Attorney and the evidence presented by the government as it
24 pertains to the factors in 18 USC Section 3142(e)(1), as well
25 as the filing by defense counsel, as to the preliminary

1 hearing in Allegheny County, as well as arguments by the
2 defense here.

3 I've considered the nature and circumstance of the
4 offense. The offense charged is an offense involving
5 narcotics, and the offense charged is a serious offense that
6 poses threat to persons of the community if the Defendant were
7 to be released.

8 I've considered the weight of the evidence and
9 defense counsel's argument as to the weight of the evidence in
10 light of the preliminary hearing in Allegheny County and the
11 bond that had been set there. And I will note that a Federal
12 Grand Jury has returned a true bill on the indictment, thus
13 finding probable cause. And I also note that the statutory
14 characteristics that I must consider are different than those
15 considerations that are imposed upon the judiciary of
16 Pennsylvania.

17 I've considered the history and characteristics of
18 the Defendant. I understand that he has been a long-time
19 resident of Pennsylvania, particularly in Philadelphia, and
20 that he has some family ties there. No family ties to the
21 Western District of Pennsylvania. I have considered his
22 employment history, which is partially verified from the
23 extent Defendant's sister said that he had employment with a
24 transportation company. I've also considered his physical
25 health and mental health as reported to Pretrial Services.

1 I've considered the prior criminal history of the
2 Defendant as summarized in the Pretrial Services report. And
3 I note that the Defendant had several juvenile offenses, none
4 of which being felonies. And I did not consider the juvenile
5 offenses in making my decision, nor do I consider any
6 dismissed offenses.

7 I note that in 2002 in Fairfax County, Virginia, he
8 plead guilty to petty larceny and was sentenced to 12 months
9 confinement, 8 months supervised release. And I note that he
10 has a misdemeanor conviction coming out of -- that was
11 withdrawn, so strike that.

12 And then ATF charges from 2005, a federal offense for
13 selling and distributing narcotics, as well as RICO,
14 racketeering, both felonies to which he was sentenced to
15 37 months of confinement followed by 2 years supervised
16 release. And the Pretrial Services officer noted that this
17 offense was committed while Defendant was on bond for the
18 offense captioned at the previously mentioned offense. I
19 noted that then in 2007 he was charged with retaliation
20 against a witness victim, a felony. He plead guilty, and he
21 served time for that offense.

22 I note in 2012 that there was a misdemeanor,
23 obstructing an officer, going back to the retaliation against
24 a witness victim at the top of that page 7 of the Pretrial
25 Services report, that that offense appears to have been

1 committed while the Defendant was on bond for the previously
2 mentioned offense at the 2005 criminal number.

3 Then in 2014, DUIs. We had an offense, also from
4 2015, default in appearance. The disposition of that was not
5 reported, so I will not consider that. Then we have the
6 current offenses at the state level, which appear to be those
7 offenses which were adopted for the federal offense. Pretrial
8 Services notes that the Defendant's been charged with
9 distribution of cocaine and methamphetamine, that he has daily
10 use of marijuana, that he has prior criminal activity while
11 under supervision. And it appears that he committed two new
12 offenses while under some form of supervision and that he has
13 two prior federal convictions.

14 I've also reviewed the Pretrial Services officer
15 recommendation, which was that there's no condition or
16 combination to reasonably insure the safety of the community.
17 And based on the evidence, I find by clear and convincing
18 evidence that no condition would reasonably assure the safety
19 of the community and that the Defendant has not overcome the
20 presumption in this case. So I will order that Mr. Suggs be
21 detained until the time of his trial.

22 Let's take a moment to transition to Mr. Clark. I
23 did also consider the Defendant's international travel with
24 the caveat that we don't know for sure what the international
25 travel was for.

1 Okay. As to Mr. Clark, does the government want to
2 present evidence at this time? Or do you want to reserve for
3 rebuttal?

4 MS. SILINSKI: Your Honor, I will reserve for
5 rebuttal; however, noting the numerous offenses that the
6 Defendant has committed, the lengthy criminal history. In
7 addition -- I'll wait until the defense counsel has proceeded.

8 THE COURT: There's also a rebuttal presumption as to
9 Mr. Clark?

10 MS. SILINSKI: Yes, Your Honor. That is correct.
11 Same as the Defendant Mr. Suggs. There is a rebuttable
12 presumption because he has been -- a Federal Grand Jury has
13 returned an indictment as to a controlled substance offense
14 with a maximum term of imprisonment of ten years or more.

15 THE COURT: Okay. All right. Mr. Haber.

16 MR. HABER: Thank you, Your Honor. If I could, I
17 would like to start, as I indicated before, by proffer; and I
18 may have some questions of Pretrial Services.

19 THE COURT: Any objection?

20 MS. SILINSKI: No, Your Honor.

21 MR. HABER: Thank you. Your Honor, Mr. Clark is also
22 a lifelong resident of the Commonwealth of Pennsylvania, also
23 from the Philadelphia area. He has extensive ties to that
24 community, which is within this Commonwealth. His mother, who
25 he helps care for and is in extremely failing health -- and I

1 would also note that some of these points were raised in the
2 filing before the detention hearing. He does care for his
3 mother and also his daughter, who he has literally daily
4 contact with. She is ten years old. And he also has a
5 fiancee that he resides with in Philadelphia.

6 Your Honor, counsel for the government in the prior
7 detention hearing made reference to employment history. And I
8 would note that Mr. Clark does have a consistent history of
9 recent employment that was verified on page 2 of the Pretrial
10 Services report. He is a member of the Local Union 542. It's
11 an Operating Engineers Union where he works as a heavy machine
12 operator and worked on the Pennsylvania pipeline.

13 He worked throughout 2018 and for part of 2017 and
14 part of 2019. In 2017, the last year in which he was able to
15 file a tax return. He was incarcerated on these charges prior
16 to being able to do so for 2018, but he did file a tax return
17 and earned approximately \$30,000, earned more than, is my
18 understanding, last year and was also earning money here in
19 2019 doing the same work. So he did have, again, I emphasize,
20 verifiable employment throughout that time period.

21 Your Honor, to the extent there's been an allegation
22 of flight risk and Pretrial Services makes a note of that, I
23 would also note there's no history of nonappearance that I can
24 see. There's no history of skipping bail. The factors that
25 are cited really are duplicative and I respectfully would

1 represent to the Court are not factors of risk of flight,
2 specifically criminal history, criminal activity, which the
3 report cites as an indication he's a flight risk or risk of
4 nonappearance.

5 I will address those in a moment under the assessment
6 of danger and whether the Defendant poses a risk of danger to
7 the community, but I would note at this point that that
8 clearly does not indicate he's a risk of nonappearance. To
9 the contrary, all indications are that he is not a flight
10 risk.

11 Both because he's a lifelong resident of this
12 Commonwealth and because he has employment. He has a
13 ten-year-old daughter. And as the government is probably
14 going to note, he also traveled, but he did so with a
15 passport, always being there's no surreptitious travel on his
16 part.

17 Your Honor, the government's obviously going to
18 raise and the Court is going to look at whether the Defendant
19 is a risk of danger to the community. And I would note a
20 couple of things in that regard. One, most of his convictions
21 are old, as I indicated in our pre-detention hearing filing.
22 But, specifically, I think this is a drug offense. There's no
23 violence alleged in this. No weapons. This is a drug
24 offense.

25 And I think of particular note is Mr. Clark is

1 41 years of age and has no prior drug convictions or drug
2 offenses. I think that's significant when you're looking at
3 this particular case, because it's a drug allegation. It's a
4 possession of cocaine with the intent to distribute. He has
5 no prior record with respect to that.

6 THE COURT: Excuse me. What about the 2007
7 conviction out of Philadelphia for possession with intent to
8 deliver a controlled substance felony, possession controlled
9 substance misdemeanor, possession of drug paraphernalia
10 misdemeanor and resisting arrest? That's a prior drug felony,
11 is it not?

12 MR. HABER: It would be if he was convicted, and he
13 was not. That's why I wanted Pretrial Services to --

14 THE COURT: He plead guilty.

15 MR. HABER: He did not plead guilty, Your Honor.

16 THE COURT: So you're questioning the veracity of
17 this report?

18 MR. HABER: On that respect, I am. I would also
19 question the veracity --

20 THE COURT: Do you have any evidence that there was
21 no conviction?

22 MR. HABER: I believe I do. I have -- first of all,
23 I spoke to my client about it. I'm not asking the Court that
24 that is conclusive evidence. But before counsel would ever
25 make a representation to Your Honor, it's something I feel I

1 have an obligation to talk to my client about. As a starting
2 point, I offer that. As a secondary source, I have a printout
3 from the first judicial --

4 THE COURT: Well, if you offer your client, then he
5 would be subject to cross-examination, if you're going to
6 offer the proffer. So I don't believe you're suggesting that,
7 correct, Mr. Haber?

8 MR. HABER: No. It was more as a way of in case the
9 Court was wondering if I didn't have a good faith basis to
10 make that recommendation.

11 THE COURT: You're an attorney of good reputation.

12 MR. HABER: Well, thank you. I just wanted to
13 reference that. But, as a follow-up, the arrest date of
14 11-29-07 -- I didn't cross-reference this. Let me see.

15 THE COURT: 11-30-07, offense date being 11-29-07.

16 MR. HABER: Right. The records out of the First
17 Judicial District of Pennsylvania indicate that Mr. Clark was
18 found guilty of a misdemeanor resisting arrest and was found
19 not guilty of the other three remaining charges he was charged
20 with, including possession with intent to distribute,
21 possession and possession of drug paraphernalia.

22 So perhaps I should have called the witness before I
23 did my proffer. I wasn't trying to create any doubt or alarm,
24 but it is my belief that that part of the Pretrial Services is
25 incorrect. And before we get to that point -- because there's

1 another indication in the record that perhaps is the most
2 important record before this Court, which is the indictment
3 that the government is relying on that for their presumption.
4 Because there was a finding of probable cause.

5 The Grand Jury found under a notice of special
6 findings that Jermaine Kyle Clark, my client, was previously
7 convicted in April of 2006 in Federal Court within the
8 District of Virginia of conspiracy to distribute 50 pounds of
9 marijuana. That, also, is incorrect.

10 THE COURT: Well --

11 MR. HABER: I'll represent that to the Court.

12 THE COURT: I understand. But I'm not here to make a
13 finding on that.

14 MR. HABER: Well, you are here to make a finding as
15 to whether you can rely on that indictment, as the
16 government's asking you to establish probable cause of these
17 offenses. The Grand Jury -- we're not going to be able to
18 debate the facts of the case as to Counts 1, 2 and 3, because
19 this is not a trial. I'm sure that Mr. Gamburg, on behalf of
20 Mr. Suggs --

21 THE COURT: So the other findings would be as to the
22 penalties and whether it would be a presumption case or not?
23 Is that your point?

24 MS. SILINSKI: No, Your Honor.

25 THE COURT: I'll hear from you in a moment. Go

1 ahead.

2 MR. HABER: Actually, a couple points. One point is
3 we're here to decide whether Mr. Clark loses his freedom for
4 who knows how long.

5 THE COURT: That's not my question. I understand
6 that. My question is, your questioning of the Grand Jury
7 citation of an April 2006 conviction out of West Virginia --

8 MR. HABER: Western District of Virginia.

9 THE COURT: Oh, Western District of Virginia.
10 -- doesn't go to probable cause on Counts 1, 2 and 3?

11 MR. HABER: It certainly could.

12 THE COURT: Hear me out. So you're saying if they
13 got that wrong, they got everything wrong? Or are you saying
14 that that affects -- my pointed question is, does that affect
15 the status of your client's detention procedure? Is this
16 being classified as a presumption case? That's my question to
17 you on this.

18 MR. HABER: To answer the last part first, it does
19 not affect it being a presumption case, Your Honor.

20 THE COURT: And that's really all I was asking at
21 that point.

22 MR. HABER: But Your Honor did, I think, ask a
23 question. If you did not, I apologize. But I thought you
24 also asked am I stating there's -- does it place into question
25 the entire indictment as to Counts 1, 2 and 3?

1 THE COURT: Is that your argument?

2 MR. HABER: I think it's one of my arguments, and I
3 think it does. I think if a Grand Jury is going to make such
4 an egregious error -- here's how we know it's an egregious
5 error. We look at the Pretrial Services report. We see
6 nothing about that.

7 THE COURT: All right. If we can move on. Do you
8 have evidence that you want to present to the Court, absent
9 oral proffer or argument?

10 MR. HABER: I do not have any witnesses that I intend
11 to present.

12 THE COURT: Okay. Did you intend to present a
13 document?

14 MR. HABER: Not at this time, Your Honor.

15 THE COURT: Okay. This would be the time to do so,
16 if you're going to.

17 MR. HABER: I guess I would present --

18 THE COURT: Then if you want to call the government's
19 agent to question him about that, go ahead and move that into
20 evidence.

21 MS. SILINSKI: Your Honor, this agent's knowledge of
22 the criminal history would not be pertinent at this point.

23 MR. HABER: I guess I would have to call Pretrial
24 Services, then.

25 THE COURT: Well --

1 MR. HABER: If there is an objection to me
2 introducing the document I was referring to earlier that
3 shows --

4 THE COURT: Well, it's not a certified document.
5 It's not a court certified document. And to the extent I
6 think that you want to call the Pretrial Services agent --
7 sorry, officer, just to question that, everything else is in
8 the Pretrial -- not to go over the whole report. But if you
9 want to ask as to that conviction being on -- this is your
10 time to put on evidence. So you want to call the Pretrial
11 Services officer?

12 MR. HABER: Yes. I call the Pretrial Services
13 officer.

14 MR. LOCKWOOD: Your Honor, may I bring documents?

15 THE COURT: Yes. If it would be helpful to you
16 addressing this situation, certainly.

17 -----

18 DANIEL LOCKWOOD

19 a witness herein, was duly sworn and testified as follows:

20 -----

21 DIRECT EXAMINATION

22 BY MR. HABER:

23 Q. Good afternoon. Could you state your name.

24 A. Daniel Lockwood.

25 Q. And how are you employed?

1 A. I'm a US Probation and Pretrial Services officer here.

2 Q. And, Mr. Lockwood, I'm going to draw your attention to the
3 information that you gathered in preparation for today's
4 hearing with respect to Jermaine Clark and specifically ask
5 you about two areas, so to speak. Do you have it in front of
6 you?

7 A. I do.

8 Q. Unless there's an objection, feel free to refer to it at
9 any time during my questions. With respect to the 2007 -- I'm
10 sorry -- yeah, 2007 reference to an arrest of Mr. Clark by the
11 Philadelphia Police Department, which indicates September 30,
12 2007, do you see that?

13 A. I do.

14 Q. I think it's on page 5. There's a listing of four
15 charges; one being a felony drug offense, two misdemeanor drug
16 offenses and a misdemeanor resisting arrest; is that correct?

17 A. Yes, that is.

18 Q. Now, there's a history of what happened in the case that
19 starts in 2007 and goes up to 2009. Where did you go -- I
20 notice that it says "9-18-09." It says "Guilty"; correct?

21 A. Yes. That's correct.

22 Q. And do you know which charge or charges he was adjudged
23 guilty of?

24 A. In reviewing the docket sheet, which I also have attached
25 here, I do find that was an error on our part, that he was

D. Lockwood - Direct

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1 found guilty of resisting arrest and that the three charges
2 above that were dismissed.

3 Q. Okay. So he was not found guilty of any drug-related
4 offense; is that correct?

5 A. That's correct.

6 Q. Secondly, sir -- thank you. And, secondly, in reviewing
7 his criminal history, did you find any federal conviction for
8 any drug offense? Specifically, did you find any reference or
9 conviction or even a charge that came out of the Western
10 District of Virginia, United States District Court?

11 A. No, I did not.

12 Q. Thank you, sir. That's all I have.

13 MS. SILINSKI: No further questions.

14 THE COURT: Okay. Thank you, Officer. Okay. So I
15 will disregard the first three charges listed under 2007.

16 MR. HABER: Your Honor, with that, I have nothing
17 further.

18 THE COURT: Okay.

19 MS. SILINSKI: Your Honor, the government's argument
20 with regards to Mr. Clark's detention rests upon the lengthy
21 criminal history and the timeline, including armed bank
22 robbery charges, aiding and abetting armed bank robbery
23 charges, firearm charges, lengthy terms of imprisonment,
24 coupled with an aggravated assault charge in 2008. The
25 Defendant was released from custody in May of 2015 and placed

1 on parole and then released on parole on 8-5-18.

2 Six months later the new offense was committed
3 bringing the current charges. Your Honor, noted in the
4 Defendant's submission to the Court was 20 years ago a 1997
5 charge and a second in 2009. And since such time, he's had no
6 new criminal charges, convictions and/or allegations.

7 The government would simply note that the Defendant
8 has been in custody during the large portion of that time,
9 thus making custody one opportunity to keep the Defendant from
10 committing additional crimes.

11 Your Honor, there is a rebuttable presumption. The
12 Defendant may have family in the Philadelphia area; however,
13 that does not weigh in favor of the Defendant not being a
14 flight risk. And, again, the government rests on the fact
15 that drug trafficking, certainly possessing substantial
16 quantities of controlled substances, is a substantial risk of
17 harm to the community, particularly the trafficking of those
18 significant quantities, including something such as cocaine.

19 With that, Your Honor, the government can also
20 present the Government Exhibits 1 and 2 with regards to the
21 Defendant's travel abroad and Agent Cruz's testimony as well
22 with the caveat that it will be very similar to that he stated
23 for Mr. Suggs, except for the note with Government Exhibit
24 No. 2.

25 So with that in mind, if the Court is willing to hear

1 the testimony of Agent Cruz as to Government Exhibit No. 2, I
2 would ask to do so.

3 THE COURT: Okay. He may come forward and be sworn.

4 MS. SILINSKI: Thank you, Your Honor.

5 -----

6 DARCOS CRUZ

7 a witness herein, was duly sworn and testified further as
8 follows:

9 -----

10 DIRECT EXAMINATION

11 BY MS. SILINSKI:

12 Q. Agent Cruz, again, just for the record, you've been an FBI
13 agent for the last three years?

14 A. Yes.

15 Q. Specifically, in addition to the report of an
16 investigation, as to the travel history for the Defendant,
17 Mr. Jermaine Clark, directing your attention to Government
18 Exhibit 1, is there anything on this report that you would
19 like to address to the Court?

20 A. Yes. Specifically, his travel in January of this year
21 just shy of -- actually, about a month prior to his new
22 charges, he travelled to Cali, Columbia, on January 13th. He
23 came back on January 21st of this year. Miami to Bogota and
24 Bogota to Cali, Columbia. Now, he returned on January 21st,
25 less than three weeks later.

D. Cruz - Direct

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1 He made a pedestrian crossing on February 9, 2019,
2 Nogales, Arizona. Not a common place for traveling to Mexico,
3 especially pedestrian crossing; however, it is one of the
4 biggest hubs for drug trafficking. Then a couple weeks later,
5 February 25th, as we know, he was charged here for the new
6 offenses.

7 Q. And specifically your reference to the travel on
8 February 2019, the pedestrian travel, that's a reference to
9 Government Exhibit No. 2?

10 A. Yes.

11 MS. SILINSKI: Your Honor, I would move to admit
12 Government Exhibit No. 2.

13 THE COURT: Okay. It's admitted.

14 MS. SILINSKI: Thank you, Your Honor. I have no
15 further questions.

16 THE COURT: Any cross, Mr. Haber?

17 MR. HABER: Yes, Your Honor. Briefly.

18 -----

19 CROSS-EXAMINATION

20 BY MR. HABER:

21 Q. Agent Cruz, with respect to -- you were asked earlier
22 about travel for vacation. And I think your answer was, yes,
23 that's a legitimate reason to go to those places and that
24 people do do that; correct?

25 A. Yes.

D. Cruz - Cross - by Mr. Haber

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1 Q. Did you research at all anything further, other than the
2 fact that Mr. Clark had traveled outside the United States to
3 those locations?

4 A. No.

5 Q. Is it within your understanding that some people, given
6 the health care issues within the United States, specifically
7 the cost associated with health care and procedures and
8 treatment, that people sometimes travel outside of the United
9 States to receive medical care and medical treatment?

10 A. I'm sorry. Repeat that question.

11 Q. Is it within your experience that people sometimes leave
12 the United States to get sometimes less expensive medical
13 treatments or medical care that they can't otherwise get here?

14 A. I've heard, yes.

15 Q. You've heard of that?

16 A. Yes.

17 Q. Are you aware that Mr. Clark was under treatment by
18 Dr. Andres Garcia in Columbia?

19 A. No.

20 Q. And was there any investigation into that?

21 A. No.

22 Q. I'm not going to ask the same questions Mr. Gamburg asked
23 about passports; but, obviously, you only had these records
24 because a passport was used; correct?

25 A. Yes.

D. Cruz - Cross - by Mr. Haber

39

1 Q. And this crossing, this pedestrian crossing, I presume
2 that, also, is noted, because Mr. Clark would have had a
3 passport?

4 A. Yes.

5 Q. Although I've never been to one of these crossings, I
6 presume, also, that anybody who's crossing is searched?

7 A. I don't know for sure about that.

8 Q. If you have any items, any bags or anything like that,
9 they would be examined before you could re-enter the United
10 States; correct?

11 A. I would assume, but that would be Customs and Border
12 Protection would better answer that question.

13 Q. Based on -- do you work with them from time to time?

14 A. I do.

15 Q. Based on your familiarity, you would agree they would
16 never allow someone to carry a bag from Mexico and not look to
17 see if it had like, say, cocaine in it?

18 A. Yes.

19 Q. They would look at that; right?

20 A. Right.

21 Q. Thank you.

22 MS. SILINSKI: Briefly, Your Honor.

23 THE COURT: I'm sorry. Mr. Haber, are you finished?

24 MR. HABER: I should have said, "Thank you. No
25 further questions."

1 THE COURT: Okay. Go ahead.

2 MS. SILINSKI: Briefly, Agent Cruz, with regards to
3 pedestrian travel, as it relates to your training and
4 experience in conducting drug investigations, is there
5 anything unique or that you would consider with regards to a
6 pedestrian travel?

7 THE WITNESS: Typically with a pedestrian crossing,
8 so it only shows inbound, because the United States doesn't
9 monitor outbound, meaning we only care about what comes in.
10 So it doesn't document what goes out. So he could have either
11 walked across or driven a vehicle.

12 Typically in regards to drug trafficking, it's very
13 common for somebody involved in drug trafficking, specifically
14 in Nogales, to drive a vehicle into Mexico and then cross on
15 foot. That vehicle will be noted and will be crossed through
16 the border by somebody else, and the vehicle would have traps.
17 So it's common and specifically in that area.

18 MS. SILINSKI: Again, Agent Cruz, you have not
19 conducted additional investigation and you're not alleging
20 that this is exactly what Mr. Clark would have done; however,
21 it's your understanding that in narcotics trafficking this can
22 occur; correct?

23 THE WITNESS: Yes.

24 MS. SILINSKI: I have no further questions, Your
25 Honor.

1 THE COURT: Okay. Any redirect, I guess, or any
2 follow-up on her cross?

3 MR. HABER: I guess just that that part of Arizona
4 that connects to, that borders Mexico; correct?

5 THE WITNESS: Yes.

6 MR. HABER: Are you aware there are numerous medical
7 and dental providers right near that border?

8 THE WITNESS: I'm not aware.

9 MR. HABER: Thank you.

10 MS. SILINSKI: No further questions.

11 MR. HABER: No further questions.

12 THE COURT: You may step down. Mr. Haber, any
13 further evidence you wish to present?

14 MR. HABER: Your Honor, no further evidence. I think
15 the government sort of gave its argument.

16 THE COURT: Let me see if she has any rebuttal
17 evidence, then I'll hear argument or supplemental argument
18 from both.

19 MS. SILINSKI: With regards to Agent Cruz's
20 testimony, no, Your Honor.

21 THE COURT: No further evidence?

22 MS. SILINSKI: No, Your Honor.

23 THE COURT: Okay. Now, Mr. Haber, I'll hear your
24 argument.

25 MR. HABER: Your Honor, I'm going to be brief,

1 because it's going to mostly rehash things that were brought
2 out during the testimony and/or proffer. As stated
3 previously, Mr. Clark is a lifelong resident of this
4 Commonwealth, has strong family ties, including mother,
5 daughter and fiancee. And of particular note, also, he was
6 employed for the two -- approximately two years leading up to
7 his arrest in this matter.

8 Your Honor, I believe that shows, A, that he is
9 clearly not a flight risk, that he's not a risk of
10 nonappearance; and, B, I think it also goes and rebuts the
11 presumption that he's a danger to the community. But, also, I
12 suggest, Your Honor, what should rebut that and does rebut
13 that is that he has no prior history of any drug trafficking,
14 no drug offenses. I don't believe he has one conviction at
15 all, even a petty small possession offense, in his 41 years of
16 life. I think that's significant.

17 Also, that he's not a danger to the community and
18 will re-offend relative to the type of offense he's now
19 accused of.

20 Lastly, I do think, Judge -- and the Court can give
21 it whatever weight it feels is appropriate, but I do think
22 that the Grand Jury's decisionmaking here has been placed into
23 serious question and the fact that they have found probable
24 cause for something that there was zero evidence of. And if
25 they're going to find probable cause for something that there

1 was no evidence of, then I think that places into great
2 question why they indicted either Mr. Suggs or Mr. Clark in
3 this case.

4 I'm not asking the Court to dismiss the indictment
5 right now. I don't think it's the appropriate forum to do so.
6 But given that their freedom -- his freedom and his liberty is
7 at issue, I think it bears on, ultimately, the issue of should
8 we incarcerate somebody just because a Grand Jury found
9 probable cause? And I think the answer, generally, as I stand
10 here and say, the answer is no to that.

11 But in this particular case, knowing they made some
12 errors, I think the answer should be and has to be no.
13 There's a combination of conditions that can assure
14 Mr. Clark's appearance and the safety of the community, and
15 that would be electronic monitoring. We would ask the Court
16 to impose that condition. Thank you.

17 THE COURT: Any supplemental argument on behalf of
18 the government?

19 MS. SILINSKI: Your Honor, with regards to the
20 charges against the Defendant in this situation, not only do
21 we have local charges that were brought, a preliminary hearing
22 transcript, which counsel for the Defendant has -- both
23 counsel for Defendant have relied upon in making their
24 arguments. But notwithstanding the fact whether the
25 government's position is that, here we have a situation where

1 a Federal Grand Jury did return an indictment and as was
2 presented at the preliminary hearing.

3 This is a detention hearing. And the question before
4 the Court is whether or not there is sufficient evidence to
5 suggest that the Defendant does not pose a flight risk and is
6 not a danger to the community.

7 Again, Your Honor, with regards to the charges in
8 this case, the Defendant is charged with possession of more
9 than five kilograms of cocaine. Based upon the submission to
10 the Court, the preliminary hearing transcript, I would proffer
11 that the Defendant from Philadelphia was in Pittsburgh, that
12 there was a controlled purchase that was set up, that five
13 kilograms of cocaine were found in the car that Mr. Clark was
14 driving.

15 And, as alleged and presented, we have found that to
16 the extent the Court would like additional confirmation as to
17 the drugs that were seized in this, I can present to the Court
18 for purposes of the kilograms the Allegheny County Office of
19 the Medical Examiner report that contains the laboratory
20 findings. These are provided to both counsel in the Rule 16
21 material. I'm happy to give them an opportunity to look at
22 this. Again, Your Honor, though, this is a detention hearing.

23 An indictment is sufficient for finding the facts
24 that have been alleged. However, to the extent the Court
25 would like for the government to admit that into evidence, I

1 would ask to do so, notwithstanding prior representation that
2 we had closed our evidence.

3 THE COURT: Anyone else want to say anything else?

4 MR. HABER: No.

5 THE COURT: Give me just a moment.

6 MS. SILINSKI: Sure.

7 THE COURT: Are you finished?

8 MS. SILINSKI: Yes, Your Honor.

9 THE COURT: As I stated, the government filed a
10 request for detention in this case indicating that there was a
11 rebuttable presumption that no condition or combination of
12 conditions will reasonably assure the appearance of the
13 Defendant is required for the safety of the community.

14 I've considered the following factors in making my
15 decision. First, I've considered that the Defendant was
16 charged with violations of 21 USC Section 846, conspiracy to
17 distribute and possess with intent to distribute five
18 kilograms or more of a mixture of cocaine and Count 2,
19 21 USC 841(a)(1), 21 USC 841 B(1)(a)(2) and 21 USC 8418.

20 I find that these are serious narcotics offenses
21 which do pose a threat to persons of the community. I've
22 considered the weight of evidence in this case. As to the
23 counts with which the Defendant was charged, the Grand Jury
24 found probable cause that he committed these offenses.

25 As to the citation of an offense which related to the

1 Western District of Virginia, which defense counsel argues is
2 incorrect, that wasn't a part of the counts that he's here to
3 face. I don't know if that was in connection with possible
4 penalties.

5 MS. SILINSKI: Your Honor, if I may, with regards to
6 the first step back, it is now the government's position that
7 it will file special findings and that no bearing as to the
8 evidence presented with regards to the substantive counts. So
9 as to Counts 1, 2 and 3, it is simply a note to put the
10 Defendant on notice that the government could file an 851
11 information.

12 As the Court is well aware, though, an 851
13 information is a separate document that is subject to the
14 government producing those exhibits and a heightened standard
15 regards to that as well. It is only to put the Defendant on
16 notice that he may be subject to heightened penalties, as
17 those heightened penalties were listed. However, with regards
18 to the charge, it still is a presumption case as to the weight
19 of the substance that has been charged.

20 THE COURT: That was my understanding of what would
21 have been in an indictment. So as of now, the Defendant has
22 not yet been charged with that enhanced penalty, based upon
23 this particular charge?

24 MS. SILINSKI: No, Your Honor.

25 THE COURT: So I find that isn't relevant to the

1 probable cause finding as to the counts. And, also, you have
2 the state court preliminary hearing in the matter. I've
3 considered the history and characteristics of the Defendant.
4 I do understand he's been -- it appears he's been a lifelong
5 resident of Philadelphia and that he is from Pennsylvania and
6 that he has a daughter and he has other family members.
7 That's not a connection to this community, although it is a
8 connection to Philadelphia.

9 I also note that defense counsel is relying on his
10 employment of the last two years. However, he was born in
11 1977; and this is the only employment I see listed in his
12 life. So while that's commendable, that's not a long record
13 of legitimate employment. I note to his other personal
14 characteristics. He reports he's in overall good health with
15 some back issues.

16 Now, as to his criminal history, I note for the
17 record that I did not consider nolle prossed or dismissed
18 counts. So the first arrests from 1997 I see were nolle
19 prossed. So I will not consider that. In 1998, at age 20, he
20 was convicted of armed robbery and aiding and abetting and two
21 counts of using a firearm during a crime.

22 I note that his supervised release was revoked after
23 serving his prison sentence. And the charge as to false
24 identification to law enforcement was dismissed, so I will not
25 consider that.

1 As to that 2007 case, the Pretrial Services officer
2 verbally amended the report to reflect he was not convicted of
3 the felony and two misdemeanors there, but he was convicted of
4 a misdemeanor resisting arrest and that this conviction
5 occurred while the Defendant was on bond for a prior case and
6 while on a term of supervised release from his armed bank
7 robbery.

8 In 2008 he was by guilty plea convicted of aggravated
9 assault and criminal conspiracy for aggravated assault. I
10 will not consider those nolle prossed charges. And it appears
11 that the Defendant committed this offense while on bond with
12 the previous conviction and still while on that term of
13 supervised release from the armed bank robbery conviction from
14 1997.

15 Then I see the charges from North Versailles and that
16 those charges are the current federal charges. I've reviewed
17 the recommendation by Pretrial Services finding that the
18 Defendant poses a risk to the community, based both on the
19 current charges as well as previous violation action on
20 previous terms of supervised release, violent behavior
21 history, criminal association, prior history of crimes
22 involving violence, the prior felony of using a firearm during
23 a crime and the criminal history.

24 While I understand defense attorney's argument that
25 he has a mother, a daughter and fiancee, I don't find that

1 those relationships are strong enough to overcome the
2 presumption, nor do I find that the misreporting of three
3 reported counts he plead guilty to -- I'm not considering
4 those. So I don't find that area of the Pretrial Services
5 report is sufficient to overcome the presumption, nor do I
6 find the reference to the Western District of Virginia
7 possible 851 notice to be sufficient.

8 So I find by clear and convincing evidence that
9 release of the Defendant would pose a danger to the community
10 and that the Defendant has not overcome the presumption.
11 Therefore, I order the Defendant to be detained pending trial
12 of these charges. Anything further on behalf of the
13 government?

14 MS. SILINSKI: No, Your Honor. Thank you.

15 THE COURT: On behalf of either of the Defendants?

16 MR. GAMBURG: No, Your Honor. Thank you for your
17 courtesy.

18 THE COURT: Okay. Thank you. We're dismissed

19 -----

20 (Whereupon, the above-captioned matter was
21 concluded.)

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1 I N D E X

2 WITNESSES:

2 PAGE:

3 **DARCOS CRUZ**

4 Direct by Ms. Silinski 15, 36
4 Cross by Mr. Gamburg 17
5 Cross by Mr. Haber 37

5 **DANIEL LOCKWOOD**

6 Direct by Mr. Haber 32

7 -----

8 C E R T I F I C A T E

9 I, NOREEN A. RE, RMR, CRR, certify that the
10 foregoing is a correct transcript from the record of
proceedings in the above-entitled case.

11 s\ Noreen A. Re

12 _____
13 NOREEN A. RE, RMR, CRR
14 Official Court Reporter

15 August 6, 2019

16 _____
17 Date of Certification

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19

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21

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25